IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 257-DB of 2004.
DATE OF DECISION: 18.1.2007
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Naresh Kumar and another.

..APPELLANTS

VS.

State of Haryana.

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. Harbhajan Singh, Senior Advocate with**
Mr. J.P. Bhatt, Advocate
for the appellants.

Mr. Kulvir Narwal, Addl. A.G. Haryana.
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ARVIND KUMAR, J.

Appellant No.1 Naresh Kumar and his mother Bhagti Devi, appellant No.2, through the instant appellant, have laid challenge to the judgment and order dated 12.2.2004 and 13.2.2004 respectively passed by Addl. Sessions Judge, Kaithal in Sessions case No.74 of 2001.

Both the appellants who are husband and mother-in-law respectively of the deceased Smt. Meena have been convicted under Section 304-B of Indian Penal Code and sentenced to undergo life imprisonment. They have further been convicted under Section 498-A IPC and sentenced to rigorous imprisonment for two years with fine of Rs.5000/- each. In default of payment of fine, rigorous imprisonment for further six months has been awarded to them.

The prosecution case, in nutshell, leaving out the necessary details is that, on 5.7.2001 Smt. Mewa Devi, mother of the deceased got recorded her statement (Ex.PB) to the police, wherein she asserted that

marriage of her daughter Smt. Meena was solemnized with Naresh son of Dalip, resident of Pabnawa about four years back, as per Hindu rites and ceremonies. Sufficient dowry was given in the marriage. About two years prior her daughter was sent to her matrimonial home where she remained happily for some days, but thereafter her husband Naresh and mother-in-law Bhagti Devi started giving beatings to her daughter on account of demand of motor cycle and Rs.60,000/- cash. Smt. Meena narrated all this to her as and when she visited her parental home. On many occasions panchayats were also held. About three months earlier, she send her daughter with her son-in-law to her matrimonial home. On 5.7.2001 she was informed that her daughter has been done to death by her husband Naresh and mother-in-law Bhagti Devi. On reaching village Pabnawa alongwith her brothers and other villagers, she noticed her daughter Smt. Meena lying dead in the house of her in-laws with injuries on her person. According to the informant, husband and mother-in-law of her daughter committed cruelty by beating, abusing and harassing the deceased on account of non-fulfillment of demand of dowry and her death also occurred for demand of dowry.

On the basis of said statement, FIR No.50 dated 5.7.2001, under Sections 304-B IPC was registered at P.S. Dhand. PW.14 ASI Mahipal prepared the inquest report (Ex.PC/2) and sent the dead body through Const. Ved Parkash (PW.4) and Const. Surinder to General Hospital, Kaithal, for post-mortem examination. PW.9 Dr. B.B. Kakkar performed autopsy on the dead body of Smt. Meena Devi at about 3.30 p.m. and found a lacerated wound with clotted blood on the right side of fore-head; two reddish contusions on left side of the fore-head and reddish contusions on left leg as well. In his opinion, the death was result of head injuries.

Thereafter, appellant No.1 Naresh Kumar was arrested on 6.7.2001 whereas accused-appellant No.2 Bhagti Devi was arrested on 8.7.2001. During interrogation accused-appellant No.1 suffered disclosure statement (Ex.PG) and pursuant thereto got recovered one kulhari (Ex.P11) which was taken into police possession vide recovery memo (Ex.PH.)

After commitment of the case by the learned Illaqa Magistrate, the then learned Addl. Sessions Judge, Kaithal framed charges against the accused-appellants for commission of offences punishable under Sections 304-B read with Section 34 IPC and under Section 498-A IPC as well.

The prosecution, in all, examined as many as 14 witnesses. Testimonies of PW.1 to PW.9 and PW.12 are of formal in nature inasmuch as PW.1 Const. Ram Niwas, Draftsman prepared the scaled site plan (Ex.PA); PW.2 ASI Mohinder Singh had recorded the formal FIR (Ex.PB/1) of the present case on 5.7.2001 and forwarded its copies to higher authorities; PW.3 Const. Kashmir Singh took the special reports of this case and handed over the same to Illaqa Magistrate and higher authorities of police; PW.4 Const. Ved Parkash took the dead body to General Hospital, Kaithal for post mortem examination and he also received parcels containing the viscera and other belongings of the deceased; PW.5 SI Ajaib Singh had prepared the final report under Section 173 Cr.P.C. against the accused; PW.6 Const. Jasmer Singh took the sealed parcels separately containing the belongings of the deceased, kulhari and blood stained earth, lifted from the spot and deposited the same with FSL, Madhuban; PW.7 Const. Randhir Singh deposited the sealed parcel with FSL Madhuban containing the viscera of the deceased; PW.8 Sham Lal took the photographs (Ex.P1 to P.5) of the dead body and also proved their negatives (Ex.P.6 to P.10) and PW.12 HC Ashok Kumar tendered in evidence his affidavit Ex.PE qua receipt of case properties and further handing over the same to PW.6 and PW.7 for depositing the same with FSL, Madhuban.

The prosecution, in order to prove the charges of cruelty and death of Smt. Meena as a consequence of non-fulfillment of demand of dowry, against the accused-appellant, further examined PW.10 Smt. Mewa Devi, mother of the deceased as well as informant of the present case, Jai Bhagwan, father of the deceased and one Jagdish, uncle of the deceased as PW.13.

PW.14 ASI Mahipal investigated the present case. Besides, reports of FSL i.e. Ex.PM and Ex.PN were also tendered in evidence of the

prosecution.

The appellants denied either raising of any demand of dowry, beating or causing death of Smt. Meena. According to defence, present case was registered at the instance of one Jai Singh, who is inimical towards them and the deceased died due to the injuries received by her by a fall from stool and striking against the iron box, when she attempted to fix an electric bulb.

The learned trial court, on appreciation of the evidence led by the prosecution, held both the accused-appellants guilty of death of Smt. Meena Devi and accordingly, both the appellants have been convicted and sentenced by the trial court, in the manner indicated above, which has necessitated the accused-appellants to prefer the instant appeal, impugning the judgment and order of their conviction and sentence.

We have heard learned counsel for the parties and with the assistance rendered by them, have gone through the record of the case carefully.

Section 304-B of the Indian Penal Code lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry, such death shall be called “dowry death” and such husband or the relative shall be deemed to have caused her death. Section 113-B has also been inserted in the Evidence Act. It deals with the presumption of “dowry death” and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to demand of dowry, the court shall presume that such person had caused “dowry death”. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the “dowry death”provided the other

requirements mentioned above are satisfied. The learned counsel for the appellants has referred to the statement of PW.10 Smt. Mewa Devi, who has stated in her cross-examination that after the last Panchayat, which had taken place three months prior to her death, Smt. Meena Devi did not come to their house nor she and her husband had visited her matrimonial home and also to the statement of PW.13 Jagdish who has stated that after the last panchayat, Meena was sent to the matrimonial home and thereafter Meena never visited her parental house nor anyone of them had gone to see her in the matrimonial home and has developed his argument that there is no evidence that soon before her death, the deceased was subjected to cruelty and harassment in connection with the demand of dowry, hence such evidence falls short of the requirement to establish the offence punishable under Section 304-B IPC. The contention is meritless. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B IPC show that there must be material to show that soon before death, victim was subjected to cruelty or harassment. Expression "soon before"is very relevant where Section 113-B of the Indian Evidence Act and Section 304-B IPC are pressed into service. But at the same time, "soon before"is relative terms which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. These words would imply that the interval should not be too long between time of making the demand and the death. It contemplates reasonable time which as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In other words, demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time, under the circumstances, be treated as having become stale enough. The deceased Smt. Meena though married with appellant Naresh about four years back, but her "muklawa" ceremony was performed only about two years prior to her death. The tenor of evidence of PW.10 Smt. Mewa Devi, PW.11 Jai Bhagwan and PW.13 Jagdish suggests that after the "muklawa ceremony" she was kept nicely only for a shorter period and thereafter she was subjected to beatings by the accused-appellant for demand of motor-cycle and a sum of Rs.60,000/-, which was conveyed by the deceased to her parents on her visit to her parental house. The panchayat which was convened about three months

prior to her death was not only the solitary one, but even prior thereto panchayats were held wherein the accused had assured to keep her in a decent manner. So much so, as evident from the statement of PW.10 Mewa Devi, even prior to the marriage of Saroj, the sister of accused-appellant Naresh, Smt. Meena Devi, since deceased, was turned out of the house after giving beatings and she was sent to the matrimonial home at the request of appellant Naresh, enabling her to attend the marriage of his sister Saroj. It has also come in the evidence that real "Bua" of the deceased is marriage to Jai Singh in village Pabnawa and their house is situated near the house of accused-appellants, but deceased Meena Devi was not even allowed to visit the house of Jai Singh. Therefore, the chain of events suggests that she was not living in congenial atmosphere in the matrimonial home, obviously on account of mal-treatment for demand of dowry. Thus, her death cannot be said to be too remote and stale enough which could not attract the ingredients of "soon before"her death. The word "soon" embrace the series of incidents forming part of the same transaction which culminated in the death of the concerned woman and the word "soon" cannot be interpreted to mean that cruelty or harassment should be just before death. In other words, if the bride is given disrespect from time to time and being tortured or harassed on account of the demand, no hard and fast rule can be fixed by the court of law while interpreting the words "soon before the death". The sequence of events, discussed above, suggests that cruelty and harassment on account of said demand was alive till her death. Learned counsel for the appellants has referred to contradiction in the statements of witnesses to the effect that the panchayat was convened in village Mundri, as stated by PW.10 Mewa Devi and PW.13 Jagdish, whereas PW.11 Jai Bhagwan has stated that it was convened at village Pabnawa. The defence cannot derive any benefit. It cannot be forgotten that the prosecution witnesses are rustic villagers and illiterate. Therefore, no undue importance can be given to this contradiction especially under the circumstances that they are incidental to the main issue for which all the three witnesses are consistent, so far the demand of dowry and harassment to Meena Devi was meted out in the matrimonial home.

The counsel for the appellant has laid much stress that there is no independent corroboration to the statements of all the three witness, who

are closely related to the deceased. The contention is again meritless. The statements of PW.10 Mewa Devi, PW.11 Jai Bhagwan and PW.13 Jagdish cannot be rejected merely on the ground of relations of deceased. It is, but natural, that instance of cruelty, harassment or demand of dowry would remain within the personal knowledge of near relations and they would be the best persons to depose about the same. Therefore, the evidence of physical and mental torture of the deceased coming from the mother, father and the uncle of the deceased need not to be discarded simply on the score of absence of independent corroboration.

Further, it has been contended on behalf of defence that PW.13 Jagdish has admitted that prior to "muklawa", at the time of marriage, there was no demand of dowry and, as such, there was no occasion to demand after "muklawa" ceremony. The contention is again meritless. There can not a thumb of rule that the demand of dowry could not be raised after the marriage. Where there was no demand of dowry at the time of marriage, it does not mean that demand cannot be raised after the marriage by the greedy husband, if the dowry was not to his satisfaction.

The learned counsel for the appellants has further laid stress that the deceased had fallen accidentally from a stool which was put on the bed for the purpose of affixing an electric bulb and her head struck with iron box lying there and as such, the death was mere accidental. This argument has been nullified by the medical evidence. PW.9 Dr. B.B. Kakkar, who conducted the post-mortem examination on the dead body of Meena Devi had opined that the injury on the head could occur on account of fall, but in that situation there would be no fracture, though on exploration of the skull, he found a linear fracture underneath bone, corresponding to injury No.1, thus, in a way, over-rules the defence version of accidental fall.

The case of Bhagti Devi, so far demand, cruelty and harassment is concerned, is distinguishable as that of appellant Naresh. She is mother-in-law of the deceased. The statements of PW.10 Mewa Devi, PW.11 Jai Bhagwan and PW.13 Jagdish are amnibus in relation to the harassment and mal-treatment by her. There are no specific instances attributed against her. She has nothing to do with the demand of motor-cycle, which is primarily for the use of accused Naresh. In **Salamat Ali & Ors. Vs. State of Bihar, 1997 SCC (Crl.) 842,** it has been held that demand of scooter predominantly

must have been raised by the husband. It cannot be expected that the father-in-law would be demanding a scooter for himself or that the mother-in-law needed it for her use and acquitted the father-in-law and mother-in-law and convicted the husband. Thus, following the ratio laid down in Salamat Ali's case (supra), Smt. Bhagti Devi deserves acquittal.

So far as appellant Naresh is concerned, the case of the prosecution is consistent coming from the mouth of PW.10 Mewa Devi, PW.11 Jai Bhagwan and PW.13 Jagdish. Their statements corroborates the cruelty, demand of motor-cycle and Rs.60,000/-. He, being the husband, is directly beneficiary to the said demand of dowry consisting of motor-cycle and Rs.60,000/-. The death of Smt. Meena has occurred otherwise than in normal circumstances in the matrimonial home. Admittedly, the death has occurred within 7 years of the marriage. It is duly proved that soon before her death she was treated with cruelty in connection with aforesaid demands of dowry and all the ingredients of Section 304-B IPC are satisfied. The counsel for the accused-appellant Naresh has argued that sentence of life imprisonment is excessive. The contention is meritless, keeping in view the kind of injuries the deceased had on her person. A bare perusal of photographs Ex.P1 to Ex.P5 shows that apart from injuries on the forehead and on both the legs, as noticed by Dr. B.B. Kakkar (PW.9) who conducted post-mortem examination on the dead body, the entire back of the deceased was having bluish colourization showing that she was given sufficient thrashing before her death. This aspect had not been described by PW.9 in his report for the reasons best known to him, but the same is having clear reflection in the inquest report (Ex.PC/2) prepared by the investigating agency. Therefore, the appellant Naresh deserves no leniency in the matter of sentence awarded to him by the trial court.

For the reasons mentioned above, the instant appeal to the extent of appellant Bhagti Devi is allowed, thereby acquitting her of the charges framed against her. She be set at liberty, if not required in any other case. The appeal qua appellant Naresh is dismissed.

(ARVIND KUMAR)
JUDGE

JANUARY 15 ,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**